



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Christopher Darcy,
Town of Harrison

Administrative Appeal

CSC Docket No. 2019-1047

ISSUED: NOVEMBER 26, 2018 (SLK)

Christopher Darcy, a former Laborer 1 with the Town of Harrison (Town), represented by Colin M. Page, Esq, appeals his resignation in good standing, effective September 14, 2018.

By way of background, Darcy signed an Agreement, effective July 29, 2015, where he admitted to an altercation with a co-worker and agreed that his continued employment with the Town was contingent upon signing the Agreement. The Agreement provided, in pertinent part:

9. Both parties agree that Mr. Darcy’s continued employment is contingent upon his attendance at work every day, unless he is scheduled to be off for a vacation/personal day, or if he is sick and brings in a doctor’s note deemed valid by the Town as soon as possible after the absence due to sickness.

10. Both parties agree that should Mr. Darcy fail to attend work every day as set forth above, his resignation shall be effective on the date of said failure automatically, pursuant to this Agreement.

13. Mr. Darcy knowingly and voluntarily agrees to all of the terms of this Agreement and has been afforded the right to consult his attorney and/or union representative.

14. Both parties agree that this Agreement is binding.

16. Mr. Darcy has voluntarily and without coercion entered into this Agreement.

During a September 14, 2018 meeting with Darcy, the Town presented that during 2016, Darcy took 21.5 sick days and, as of December 31, 2016, he had 6.25 sick days in his bank. Thereafter, in January 2017, Darcy received an allocation of 15 sick days bringing his total sick days in his bank to 21.25 days. The Town indicated that, as of May 10, 2017, Darcy used all 21.25 sick days. Further, it asserts that, except for three days, all sick days that Darcy used were unexcused because he did not provide doctor's notes. Moreover, he was sick for 11.5 additional days during the remaining months of 2017 and six of those days were unexcused as he did not provide notes. Thereafter, in 2018, Darcy was allocated 15 sick days, which he used by March 21, 2018. Further, all sick days in 2018 were unexcused as he did not provide notes. Therefore, the Town asserted that Darcy violated the Agreement and, due to this violation, it entered into his personnel record that he resigned in good standing, effective September 14, 2018.

In Darcy's appeal to the Commission, he claimed that he did not resign and argues that the Town is attempting to circumvent the Civil Service removal process. Therefore, he requests that this matter be transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

In response, the Town, represented by Paul J Zarbetski, Town Clerk/Attorney, asserts that the Commission does not have jurisdiction over this matter as it is a private employment contract between the parties. It emphasizes that Darcy entered into a valid, binding Agreement and he was advised to consult with his union and union counsel before signing it. The Town highlights that the Agreement states that Darcy voluntarily signed it without coercion. Further, it asserts that Darcy continuously violated the attendance terms, which led to his automatic resignation under the Agreement.

In reply, Darcy presents that, as a Civil Service jurisdiction, the Town needs to follow the Civil Service rules for discipline. It highlights that, under the rules, an appointing authority has the burden of proof to remove an employee for "chronic or excessive" absenteeism. However, in this matter, the Town is not even claiming that Darcy's actions met this standard. Instead, the Town argues that the Commission does not have jurisdiction in this matter without any legal standing. Darcy acknowledges that the Agreement is a "Last Chance Agreement." Further, Darcy highlights that although the Town claims that his attendance was deficient in 2016, 2017 and 2018, it never disciplined him, not even providing him a written warning. Moreover, while the Town claims that the absences were not approved, it does not give any reason why. Additionally, while Darcy admits that "Last Chance

Agreements” are relevant evidence in disciplinary proceeding, he argues that their existence does not exempt appointing authorities from following the Civil Service disciplinary process and from meeting the Civil Service required standards for removal. Further, Darcy highlights cases where Administrative Law Judges have recommended that charges be overturned, or penalties be reduced in cases involving “Last Chance Agreements.”

CONCLUSION

N.J.A.C. 4A:2-6.1(d) provides that where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Commission under *N.J.A.C.* 4A:2-1.1.

N.J.A.C. 4A:2-2.1(a) provides, in pertinent part, the Civil Service rules for major discipline apply to permanent employees in the career service.

Darcy requests that this matter be transmitted to the Office of Administrative Law (OAL) for hearing. However, resignation in good standing appeals are generally decided on the written record and hearings are only granted when a material dispute of fact that cannot be resolved on the written record is presented. For the reasons set forth below, no such dispute is present in this matter.

Initially, it is noted that under *N.J.A.C.* 4A:2-2.1(a), the Commission has the authority to decide appeal of major discipline of all permanent employees in the career service except where there is another procedure under a collective negotiations agreement. Additionally, as noted above, the Commission has the authority to decide appeals of resignation in good standing. Consequently, contrary to the Town’s claim, the Commission has jurisdiction over this matter.

The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 *N.J.* 465 (1990); *Honeywell v. Bubbs*, 130 *N.J. Super.* 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 *N.J. Super.* 472 (App. Div. 1961), *cert. denied*, 35 *N.J.* 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. Moreover, a settlement agreement should be enforced where a party has competent representation of his or her choosing and entered into the agreement knowingly and voluntarily. *See e.g., In the Matter of Barbara Knier* (MSB, decided January 12, 1999) and *In the Matter of William Munoz* (MSB, decided June 16, 1998).

In the present matter, there is no basis on which to grant Darcy’s request for a hearing. The plain language of the Agreement indicates that his employment was contingent upon his attendance at work every day, unless he had a scheduled day

off or valid doctor's note if he was sick. Further, the Agreement states that if he failed to comply with these terms, his resignation would be automatic. Darcy argues that it is the appointing authority's burden to prove that he was "chronic or excessively" absent under Civil Service rules. However, the Agreement, which he voluntarily signed to keep his position after admitting to an altercation with a co-worker, did not require excessive absenteeism for his resignation. Instead, a plain reading of the Agreement indicates that one sick day without a valid doctor's note was sufficient for his automatic resignation. While Darcy complains that he was not given a written notice each time he was absent due to sickness without a note, the Agreement does not require the Town to provide any such notice. In fact, the Agreement itself is the written notice. It is further noted, based on the Town's representations which Darcy has not refuted, Darcy had many sick days without providing a doctor's note and any one of those occurrences could have led to his automatic resignation. Most importantly, Darcy signed the Agreement which explicitly indicated the he did so knowingly, voluntarily and without coercion. Thus, he agreed to the terms of the Agreement which called for his resignation from employment given the appropriate circumstances. Accordingly, his argument that the Town is bypassing the disciplinary process is unpersuasive. If Darcy wanted any adverse action that stemmed from the Agreement to be considered discipline or provide for some procedural process or mechanism, he had the ability to negotiate for such terms prior to signing the Agreement.

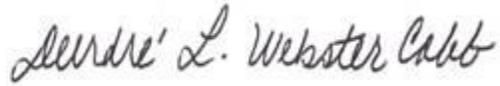
Finally, in order for Darcy to be successful in his appeal of the resignation in good standing under *N.J.A.C.* 4A:2-6.1(d), he would have to establish duress or coercion. In this case, there is absolutely no evidence in the record that Darcy's resignation pursuant to the terms of the Agreement was the result of duress or coercion. In fact, his signature on that Agreement acknowledging his knowing and voluntary agreement with all the terms establishes exactly the opposite. Accordingly, the Commission denies Darcy's appeal of his resignation in good standing.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21st DAY OF NOVEMBER, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Christopher Darcy
Colin M. Page, Esq.
James Fife
Paul J. Zarbetski, Town Clerk/Attorney
Kelly Glenn
Records Center